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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,150	02/14/2001	Ralph E. Frazier	8686	2319

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EXAMINER

YIGDALL, MICHAEL J

ART UNIT PAPER NUMBER

2122

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/782,150	<b>Applicant(s)</b> FRAZIER, RALPH E.	
	<b>Examiner</b> Michael J. Yigdal	<b>Art Unit</b> 2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004 and 12 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s)    is/are withdrawn from consideration.
- 5) ☐ Claim(s)    is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s)    is/are objected to.
- 8) ☐ Claim(s)    are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on    is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No.   .
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>  </u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                 |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>  </u> | 6) <input type="checkbox"/> Other: <u>  </u>  |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 16, 2004 has been entered. Claims 1-10 are pending.

### ***Response to Arguments***

2. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection, as presented below with reference to Eilert and Burgess.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,282,560 to Eilert et al. (art of record, "Eilert") in view of U.S. Pat. No. 5,796,633 to Burgess et al. (art made of record, "Burgess").

With respect to claim 1 (currently amended), Eilert discloses a computer implemented method of controlling system performance (see, for example, column 1, lines 23-28).

Although Eilert discloses monitoring scheduling information (see, for example, column 10, lines 1-4), analyzing the scheduling information and calculating performance indexes (see, for example, column 6, lines 34-43), Eilert does not expressly disclose the steps of:

(a) recording event information relating to operating software events as the events occur, in order to provide operating software program scheduling information relating to interactions between the operating system software and the programs and tasks managed by the operating system software, the event information including information relating to processor resource usage, priority and efficiency of operation of various applications managed by the operating system software; and

(b) analyzing the operating software program scheduling information in order to determine how system performance is affected by the operations of the applications being managed by the operating system software.

However, Burgess discloses monitoring operating system events (see, for example, column 4, lines 23-27) and recording associated information to a database (see, for example, column 4, lines 50-56), so that a user can analyze historical performance data and monitor usage trends (see, for example, column 2, lines 38-44). The information relates to interactions between the operating system and the programs and tasks managed by the operating system, such as processor resource usage and efficiency (see, for example, column 7, lines 20-33), as well as thread priority and switching (see, for example, column 7, lines 34-44).

Burgess further discloses that the information is analyzed to determine how system performance is affected, so as to generate alert messages when performance reaches a predetermined threshold (see, for example, column 6, lines 47-56). The messages may be used

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to adjust operating system parameters and improve performance (see, for example, column 7, lines 45-55 and column 8, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the system of Eilert with the event recording features taught by Burgess, so that users can track historical performance data and usage trends. Likewise, it would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the system of Eilert with the analysis features taught by Burgess, so that alerts can be generated and subsequently used to improve performance.

Eilert also discloses the step of:

(c) adjusting defined parameters to modify system performance (see, for example, column 6, lines 34-43, which shows adjusting system resource controls to attain a level of performance).

With respect to claim 2 (original), Eilert also discloses the limitation wherein the defined parameters include at least one of scheduling priority, program termination, delayed restart, and program load leveling (see, for example, column 10, lines 17-24, which shows dispatching priority, i.e. scheduling priority, as an exemplary resource control parameter).

With respect to claim 3 (original), Eilert also discloses the limitation wherein the program scheduling information includes at least one of a count of the number of program schedules, a count of the number of program preempts, a count of the number of interrupts, a highest priority attained, a lowest priority attained, a program identity, a length of run-time, a count of the number of times in the idle loop, a count of the duration of the idle loop, a sequential record of

scheduled programs, a sequential record of priorities, a sequential record of events, a count of the number of programs waiting to run per schedule time, and an identity of programs waiting to run per schedule time (see, for example, column 7, lines 15-47, which shows identifying an application, i.e. determining a program identity).

With respect to claim 4 (original), Eilert also discloses the limitation wherein said analysis step includes determining at least one of a system processing capability, a number of programs scheduled, a program run-time priority, a length of time each program executed, a number of preemptions, a number of interrupts, and an amount of idle time (see, for example, column 10, lines 47-52, which shows determining the amount of time a task should be made non-dispatchable, i.e. the amount of idle time).

With respect to claim 5 (previously presented), Eilert also discloses monitoring operating software scheduling information (see, for example, column 10, lines 1-4, which shows monitoring system resource utilization, i.e. scheduling information).

With respect to claim 6 (currently amended), Eilert discloses a computer system for capturing operating software scheduling information during execution of said operating software (see, for example, column 8, lines 36-46, which shows the capture of real-time service data during execution) comprising:

- (a) a processor for receiving and transmitting data (see, for example, column 1, lines 23-28, which shows a processor used for real-time data streams); and
- (b) a memory coupled to the processor, the memory having stored therein sequences of instructions which, when executed by the processor, cause the processor to adjust defined

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parameters to modify system performance (see, for example, column 13, lines 46-53, which shows computer readable program code, i.e. sequences of instructions, inherently stored in a memory coupled to the processor, and column 6, lines 34-43, which shows adjusting system resource controls to attain a level of performance).

Although Eilert discloses monitoring scheduling information (see, for example, column 10, lines 1-4), analyzing the scheduling information and calculating performance indexes (see, for example, column 6, lines 34-43), Eilert does not expressly disclose the limitation wherein the processor records operating software as the events occur, in order to provide operating software program scheduling information relating to interactions between the operating system software and the programs and tasks managed by the operating system software, the event information including information relating to processor resource usage, priority and efficiency of operation of various applications managed by the operating system software, and analyzes the operating software scheduling information in order to determine how system performance is affected by the operations of the applications being managed by the operating system software.

However, Burgess discloses monitoring operating system events (see, for example, column 4, lines 23-27) and recording associated information to a database (see, for example, column 4, lines 50-56), so that a user can analyze historical performance data and monitor usage trends (see, for example, column 2, lines 38-44). The information relates to interactions between the operating system and the programs and tasks managed by the operating system, such as processor resource usage and efficiency (see, for example, column 7, lines 20-33), as well as thread priority and switching (see, for example, column 7, lines 34-44).

Burgess further discloses that the information is analyzed to determine how system performance is affected, so as to generate alert messages when performance reaches a predetermined threshold (see, for example, column 6, lines 47-56). The messages may be used to adjust operating system parameters and improve performance (see, for example, column 7, lines 45-55 and column 8, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the system of Eilert with the event recording features taught by Burgess, so that users can track historical performance data and usage trends. Likewise, it would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the system of Eilert with the analysis features taught by Burgess, so that alerts can be generated and subsequently used to improve performance.

With respect to claim 7 (original), the limitations recited in the claim correspond to the limitations recited in claim 5 (see Eilert and Burgess as applied to claim 5 above).

With respect to claim 8 (original), the limitations recited in the claim correspond to the limitations recited in claim 2 (see Eilert and Burgess as applied to claim 2 above).

With respect to claim 9 (original), the limitations recited in the claim correspond to the limitations recited in claim 3 (see Eilert and Burgess as applied to claim 3 above).

With respect to claim 10 (original), the limitations recited in the claim correspond to the limitations recited in claim 4 (see Eilert and Burgess as applied to claim 4 above).



***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Yigdall whose telephone number is (571) 272-3707. The examiner can normally be reached on Monday through Friday from 7:30am to 4:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MY

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Art Unit 2122

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SUPERVISORY PATENT EXAMINER